

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4391 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

VAGHELA KALIDAS AMARSHIBHAI SINCE DECEASE THROUGH HIS HEIR

Versus

DEPUTY D D O

Appearance:

MS KUSUM M SHAH for Petitioners
No one present for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/10/97

ORAL JUDGEMENT

The challenge has been made by the petitioner (since deceased) by this petition to the order of the respondent no. 1 dated 17th June, 1985 under which the petitioner was dismissed from the service.

2. The petitioner while serving as Talati-cum-Mantri

of Lakhatar Gram Panchayat during the period between 29th March, 1974 to 27th July, 1977 had misappropriated Rs.1056-70 ps., the amount which was received by him as revenue, education cess etc. The petitioner deposited the said amount in the Government treasury on 29-9-1977. For this misappropriation a criminal case has been filed against the petitioner and he pleaded guilt. The petitioner was convicted by the criminal court for the offence punishable u/s 409-/67/477 of the I.P. Code. However, the trial court has given the petitioner the benefit of Probation of Offenders Act, 1958.

3. For this misconduct of misappropriation of the government money the petitioner was convicted in the criminal case and he was given a notice dated 10-9-1980 to show cause as to why he should not be punished by reducing his pay to minimum in the pay scale. This show cause notice has been replied by the petitioner. After the reply of the show cause notice the respondent no. 1 has not taken any final decision. Taking it to be serious and grave misconduct, the petitioner was given second notice dated 19th March 1984 calling upon the petitioner to show cause as to why he should not be dismissed from service. The petitioner submitted his explanation to the show cause notice. The respondents by its order dated 13-6-1985 has given penalty of removal of the petitioner from the service. The petitioner filed civil suit against this order of removal and interim relief appears to have been granted to him. But the petitioner having apprehension that the suit may not be maintainable he preferred the present Special Civil Application before this Court. "The suit has been withdrawn or not it has not been brought to the notice of this Court." In this Special Civil Application in para 12 the petitioner has taken it to be a case of the penalty of removing him from service. Whereas, in the prayer clause it is said to be his dismissal from the services. This discrepancy should not have been made. During pendency of this Special Civil Application the petitioner has expired and his heirs and legal representatives have already been brought on the record.

4. The respondents filed reply to this Special Civil Application.

5. Learned Counsel for the petitioner has raised many fold contentions challenging the validity of the impugned order in this Special Civil Application. The first contention raised is that the show cause notice which has been given after five years is arbitrary and unjustified. Learned Counsel for the petitioner,

however, contended that in the first show cause notice penalty proposed was only of reduction of pay of the petitioner to the minimum stage, whereas, in the second show cause notice removal or dismissal of the petitioner from the service was proposed punishment. When the authority has decided earlier taking into consideration all the facts and circumstances of the case where the petitioner should be given only penalty of reduction of pay to minimum stage then in the second show cause notice also the penalty which has been proposed earlier could have been proposed to be given. It is next contended that when on the first show cause notice no action has been taken by the respondent for five years then it should be taken to be case where the respondents have been satisfied that no penalty is required to be given to the petitioner.

6. Last contention raised is that looking to the facts of the present case, penalty of dismissal or removal of the petitioner from the service is highly harsh and disproportionate to the guilt. Learned Counsel for the petitioner in support of his contention has made reference to the facts that the petitioner has confessed the guilt in the criminal case and the Court has taken lenient view as there has been no substantive sentence given to him he has been given the benefit of the Probation of Offenders Act. Misappropriation is there but it is a case of temporary misappropriation and under family compelling circumstances the petitioner has detained said amount for some time. So, in the department inquiry the department should have taken lenient view also.

7. On the other hand, learned Counsel for the respondents has raised many preliminary objections regarding maintainability of the special civil application. On merits of the case, learned counsel for the respondents contended that the petitioner has misappropriated government money. Misappropriation of government money was made during period from 29-3-74 to 27-7-77 and in the criminal case he has confessed his guilt. Merely because the criminal court has taken lenient view and it has not thought fit to give substantive sentence to the petitioner does not mean that in the the departmental inquiry also lenient view should be taken in a case where the petitioner has misappropriated government money. On confession of the petitioner for the offence punishable u/s 409-467-477 of the I.P. Code which were the offences of moral turpitude, minimum penalty is removal or dismissal from the service and as such in this case the respondents have

not committed any error whatsoever in giving of this penalty. Replying to the contention of the learned counsel for the petitioner that show cause notice has been given after five years, learned counsel for the respondents contended that delay cannot be taken to fatal to the extent of exoneration of the petitioner for the serious charges of misappropriation of the government money. In the case of misappropriation of government money and the conviction of the petitioner by the criminal court the only appropriate punishment in departmental inquiry would have been of dismissal or removal. Delay cannot be taken to be in favour of the petitioner because the petitioner has been paid for all these years salary and he has been benefited, otherwise he could have been removed or dismissed from service in the year 1980 itself.

8. So far as the last contention of the learned Counsel for the petitioner is concerned, learned counsel for the respondents contended that where the petitioner has misappropriated government money no lenient view should have been taken, more so where the petitioner has been convicted for the said act by the criminal court also. The petitioner has admitted his guilt and merely because he has admitted guilt it cannot be taken a matter in favour of the petitioner in departmental inquiry.

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Learned Counsel for the petitioner does not dispute that in the first show cause notice which has been given to the petitioner, no final order has been passed. It is true that in the first show cause notice the respondent no. 1 has only proposed to give penalty of reduction of pay of the petitioner to the minimum stage. But the matter has not been finally decided. I do not find any wrong or illegal in the act of the respondents to give a notice of proposed penalty of dismissal/removal of the petitioner from service. Even in the case where lesser punishment has been given it is always open for the higher authority to review the matter and enhance penalty also. It is true that after the final order has been passed, then, the same authority may not be the competent to enhance penalty. But till the proceedings are finally concluded it is always open to the disciplinary authority to give show cause notice for higher proposed punishment looking to the grave misconduct of the petitioner. Moreover, in such matters, important consideration is as to what prejudice has been caused to the petitioner by giving show cause notice of proposed punishment of dismissal/removal of the petitioner from service. The

delay in giving the notice cannot be taken a fatal to the proceedings nor the same can be taken in favour of the petitioner. Because of this delay on the other hand the petitioner has been benefited as he continued in service for all the years and he got the benefit of the salary or where he was under suspension of substantive allowance. This contention of the learned counsel for the petitioner is wholly misconceived. In case, such contention is accepted and the petition is allowed on this ground then it will open flood gate of corruption and favouritism. Substance of the matter has to be considered and another aspect as to what prejudice has been caused to the petitioner from this delay. As stated earlier in this case learned counsel for the petitioner has failed to show that any prejudice has been caused to the petitioner by giving him second show cause notice at late stage. The petitioner has admitted his guilt and the amount has been deposited by him on 29th September, 1977. It is admitted by the learned Counsel for the petitioner that the petitioner has misappropriated government money during the period from 29-3-1974 to 27-7-1977. So it was recovered after the petitioner misappropriated the government money. So far as the defence taken by the learned counsel for the petitioner that the petitioner has done all this under the compelling family circumstances, I do not find anything on the record of this special civil application. Otherwise also even if it is taken that at one point of time the petitioner was pressed under such compelling family circumstances where he has to misappropriate the government money, I fail to see any justification and valid ground for the petitioner to commit misconduct of misappropriation of government money. If such matters are taken into consideration and considered it to be a mitigating circumstances more so in such matters, then, it will encourage the government employees in the offices to misappropriate government money. These matters are to be taken very seriously and not lightly or casually.

10. I do not find any substance in the contentions of the learned Counsel for the petitioner that the penalty given to the petitioner is being excessive. In the matter of misappropriation of the government money this is minimum penalty which has to be given. In this respect I think it proper to make reference to the decision of the Hon'ble Supreme Court in the case of Narayan Dattayatra Ramteerthakhar Vs. State of Maharashtra & Others reported in SCC 1997 (1) 299.

11. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged.

Interim relief granted earlier is hereby vacated. As the petitioner has died, no order as to costs.

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